UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 22-10028 (JKS)
AMERICAN EAGLE DELAWARE HOLDING COMPANY, LLC, ET AL.,	.	824 Market Street
	.	Wilmington, Delaware 19801
Debtors.	.	
	.	Wednesday, April 27, 2022
. . . . .	.	11:00 a.m.

TRANSCRIPT OF CONFIRMATION OF DEBTORS' MODIFIED THIRD AMENDED PLAN OF REORGANIZATION
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES VIA ZOOM:

For the Debtors: Polsinelli, PC
By: SHANTI M. KATONA, ESQ.
222 Delaware Avenue, Suite 1101
Wilmington, DE 19801

Polsinelli, PC
By: DAVID E. GORDON, ESQ.
1201 West Peachtree Street, NW
Suite 1100
Atlanta, GA 30309

(Appearances Continued)

Audio Operator: Electronically Recorded by Madaline Dungey, ECRO

Transcription Company: Reliable
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (continued):

For UMB Bank, N.A., Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
By: NATHAN F. COCO, ESQ.
Chrysler Center
666 Third Avenue
New York, NY 10017

I N D E X

THE CLERK: Counsel, you are live in the courtroom and the hearing is about to begin. Please remember to state your name for the record when you speak and every time you speak. Please keep your video off and stay muted if you are not speaking to the Judge so the Judge can concentrate on the parties that are presenting at the time.

Thank you.

THE COURT: Good morning. This is Judge Stickles. We're on the record in the case of American Eagle Delaware Holding Company, LLC, Case Number 22-10028. This is the time set aside for the scheduled confirmation hearing.

I'll hear from debtors' Counsel.

MS. KATONA: Good morning, Your Honor. Shanti Katona, Polsinelli, on behalf of the debtors. Your Honor, the only matter --

THE COURT: Good morning.

MS. KATONA: The only matter, as you noted, Your Honor, is confirmation of the debtors' modified third amended plan of reorganization.

Your Honor, unless you have any questions before we get started, I'd like to turn the podium over to Mr. Gordon.

THE COURT: No, that's fine.

Good morning, Mr. Gordon.

MR. GORDON: Good morning, Your Honor.

As Ms. Katona said, we are here today on confirmation

of the debtors' modified third amended plan of reorganization, filed at Docket Number 315. In support of confirmation of the debtors' plan, on April 22nd, the debtors filed three documents. We filed the balloting declaration of Stephenie Kjontvedt of Epiq Corporate Restructuring at Docket Number 314.

We filed the declaration of Todd Topliff, president of the debtors, filed at Docket Number 317. And finally, we filed our confirmation brief, our memorandum of law in support of plan confirmation at Docket Number 318.

Importantly, Your Honor, no objections have been filed to confirmation of the debtors' plan and we've resolved all the informal objections of the United States Trustee by putting proposed language in the amended plan and the Court's proposed order. The way I propose to proceed this morning, what I'd like to do is run through our legal argument citing to Mr. Topliff's declaration and Ms. Kjontvedt's declaration, as appropriate.

At the conclusion of legal argument, I'd like to offer those declarations into evidence and provide any party who wishes to cross-examine them an opportunity to do so. And then, I'd like to proceed with the direct examination of Mr. Chad Shandler of FTI, the debtors' financial advisors.

THE COURT: Okay. Thank you, Mr. Gordon.

MR. GORDON: So, Your Honor, as set forth in our confirmation brief, the plan meets all the requirements of

confirmation set forth in Section 1129 of the Bankruptcy Code.

Starting with Section 1129(a)(1), which requires that the plan comply with the Bankruptcy Code, the plan complies with all of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the local rules. It's also the best means for reorganizing the debtors' business. Going to the applicable provisions of the Code, starting with Section 1125, proper solicitation, as set forth in the Topliff declaration, the debtors complied with the disclosure statement order, including the solicitation procedures in all respects. Votes to accept or reject the plan were solicited and tabulated fairly in good faith in a manner that is consistent with this Court's disclosure statement order of the Bankruptcy Code and the Bankruptcy Rules.

Turning to the next applicable requirement, Section 1122 of the Bankruptcy Code, proper classification, the debtors assert that the plan properly classifies claims on interest. The plan has nine classes. Other priorities -- Class 1 is other priority claims, Class 2 is other secured claims, Class 3 is the Series 2018A-1 bond claims, Class 4 is the 2018A-2 bond claims, Class 5 is the Series 2018B claims, Class 6 is the 2018C claims, Class 7 is our general unsecured creditor class, Class 8 is intercompany claims, and Class 9 is (indiscernible). So the debtors have property classified claims and interests into separate legally distinct classes.

All claims and equity interest within a class are substantially similar. And in addition, each claim and equity interest differs from the claims and equity interest in the other classes. So accordingly, the debtors assert that the classifications comply with the Bankruptcy Code Section 1122.

Turning to the next applicable requirement of the Code, Section 1123(a)(3), the required provisions that must be in the plan. Section 1123(a) requires that a plan designate claims and interest, explain which claims and interest are impaired or unimpaired, provide for equal treatment within each class, provide an adequate means of implementation and make certain disclosures. And as set forth in our confirmation brief and in the Topliff declaration, each of these requirements have been met.

Turning to 1123(b), which is permissible provisions, the plan does contain debtor releases, third-party releases, an injunction, and exculpation provisions, all of which are permissible provisions in a Chapter 11 plan.

Beginning with the debtor releases. Pursuant to the Bankruptcy Code, the debtors may release claims if the release is a valid exercise of the debtors' judgment, it's fair and reasonable, and is in the best interest of the estate. And here, in this plan, the proposed debtor releases are a valid exercise of the debtors' business judgment. They play an important role in the overall plan of reorganization and

they're appropriate under the master mortgage factors as set forth in our brief. And further, they're supported by the debtors' creditors.

With respect to the third party releases, just like the debtor releases, the third party releases are an essential component of the plan. Consensual third-party releases can be contained in a plan pursuant to the authority granted under Section 105(a) of the Bankruptcy Code. And here, the third-party releases are the result of negotiations and back and forth with the Office of the United States Trustee.

And so the third-party releases, they're narrow, they're only by holders of claims that voted to accept the plan, or voters that voted to reject the plan without affirmatively opted in. So as a result, these third-party releases are consensual and they're permissible under the Bankruptcy Code.

With respect to the plan injunction, the plan injunction provisisions simply seek to assure that parties don't interfere with the consummation and implementation of the plan, they're narrowly tailored, their customary in this district, and they're necessary to effectuate a plan.

Finally, with respect to exculpation, exculpation provisions are appropriate when the protection given in the exculpation clause is necessary and is given in exchange for fair consideration. Typically, a state fiduciary and other

parties involved in the implementation of the plan are granted exculpation provisions. And in this case, the exculpation provisions, just like the third-party releases, are the result of discussions with the United States Trustee, so that they're very narrowly tailored.

They apply only to estate professionals. And so on that basis, the debtors assert that the permissible provisions to the plan set forth, you know, as authorized by 1123(b) of the Bankruptcy Code, have been met. And so with that, the requirements of 1129(a)(1) are satisfied.

Turning to 1129(a)(2), the requirement that the debtors comply with the Bankruptcy Code, as set forth in the Topliff declaration, the debtors have complied with the Bankruptcy Code in all respects and in the solicitation and tabulation of the votes on the plan.

With respect to 1129(a)(3), the requirement that the plan be proposed in good faith, as set forth in the Topliff declaration, the plan is the result of months of collaboration and arms-length negotiations among the debtors, the Trustee, the consenting bond holders, and the plan, you know, was formulated with a legitimate, honest purpose of restructuring the debtors' affairs and allowing the debtors to continue with the going concern for the benefit of all parties (indiscernible).

With respect to 1129(a)(4), the required disclosures,

the plan provides that any payments made or promised by the debtors' estates for services rendered in connection with these Chapter 11 cases have been or will be subject to review by the Court and by all parties in interest, and so the requirements of 1129(a)(4) are met.

With respect to the 1129(a)(5), another set of required disclosures, as set forth in the plan and the Topliff declaration, the plan discloses the members of the Board of Directors and the Officers of the debtors as of the petition date and discloses that they will remain in their current capacities upon confirmation of the plan.

Section 1129(a)(6), applying the rate changes, is inapplicable to these debtors. Section 1129(a)(7) is the best interest of creditors (indiscernible), and this provision of the Code requires that holders of claims or interests either vote to accept the plan or they will receive as much as they would in a liquidation under Chapter 7.

Here, the plan makes clear that the distributions available to creditors under the plan are greater than what creditors would receive in a Chapter 7 liquidation. We had submitted a liquidation analysis in the plan supplement filed by the debtors and Mr. Chandler [*sic*] will further -- Mr. Shandler Shannon will further testify with respect to that liquidation analysis and that the requirements of 1129(a)(7) have been met.

With respect to 1129(a)(8), acceptance by creditors, as set forth the Kjontvedt declaration, here holders of claims in Classes 1, 2, and 9, are unimpaired. They're deemed to accept the plan. Holders of claims in Classes 3, 4, 5, and 7 are impaired, but they voted to accept the plan. And then holders of claims in Class 6 are impaired, but they voted to reject the plan. And then holders of claims in Class 8 are impaired. They're deemed to reject the plan.

So, although we haven't met the requirements of Section 1129(a)(8) in that all impaired accepting classes have not voted to accept the plan, the debtors intend to confirm the plan via the cram-down provision of Section 1129(b), which I'll get to later in my argument.

Turning to Section 1129(a)(9) of the Bankruptcy Code, payment in full of priority claims. Here, the plan provides for payment of all administrative expense claims, accrued professional compensation claims, property tax claims, and all other priority claims. It's not required and has been met.

1129(a)(10) requires an impaired accepting class. As set forth in the Kjontvedt declaration, holders of claims in Classes 3, 4, 5, and 7 are all impaired and they all voted to accept the plan. We believe we've met that requirement.

With respect to the 1129(a)(11), feasibility, 1129(a)(11) involves two determinations. The first is the debtor's ability to consummate the provisions of the plan. The

second is that the debtor's ability to reorganize is a viable entity. And, Your Honor, this is a relatively low threshold.

Feasibility doesn't require a guaranty of success, it requires a reasonable assurance of compliance with the plan terms. Here, this plan is a plan of reorganization. Under the plan, the debtors will reduce their secured bond obligation significantly, will receive a new infusion of $28 million, which the consent holders have committed to doing, and as set forth in their financial projections and the confirmation brief, that debtors have sufficient funds to meet their -- will have sufficient funds to meet their post-confirmation obligations. And we'll also be presenting testimony from Mr. Shandler today to that effect that the plan is feasible.

1129(a)(12), statutory fees, the plan provides that all statutory fees will be paid by the debtors until the Chapter 11 cases are either closed, converted, or dismissed.

There are three provisions on 1129(a) that are inapplicable. Those are 1129(a)(13), continuation of retirement benefits; 1129(a)(14), domestic support obligations; and 1129(a)(15), which applies only to individuals. And so those provisions are not applicable to these debtors.

Section 1129(a)(16), compliance with law governing non-profit companies. This provisions requires that all transfers of property of a not-for-profit corporation under a plan must be in accordance with applicable provisions of

non-bankruptcy law. Here, the plan doesn't provide for the transfer of any of the debtors' assets, and so that provision is also (indiscernible).

The next step, Your Honor, is 1129(b), the cram-down provisions of the Bankruptcy Code. And the debtors assert that the plan satisfies the requirements of 1129(b) with respect to the rejecting classes. But, Your Honor, 1129(b), to satisfy that requirement, the debtors have to show that the plan does not discriminate unfairly and that the plan is fair and equitable.

And here, Classes 3 through 8 are impaired under the plan. Class 3, Class 4, Class 5, which are all bond claims, they all voted to accept the plan. Class 6, which contains the 2018C bond claims, voted narrowly to reject the plan. And then, Class 7, the general unsecured claims, voted to reject. Class 8, intercompany claims is deemed to reject the plan (indiscernible) because --

THE COURT: Class -- I'm sorry. Mr. Gordon, did you say Class 7 rejected the plan?

MR. GORDON: No, no. Class 7 voted --

THE COURT: Okay.

MR. GORDON: -- to accept the plan. So that's the general unsecured class. But the rejecting class is Class 6.

THE COURT: Okay. I just want to make sure. I misunderstood you.

MR. GORDON: So, Your Honor, with respect to Class 6, the plan is fair and equitable in this case because no order of a claim or interest that's junior to the claims of an impaired, non-accepting class will receive or retain any property under this plan. The debtors assert and will demonstrate through Mr. Shandler's testimony here today that holders of claims in Class 6 are claims of equal -- Classes 6 and 7, so the C bond holders and the general unsecured claims. Those claims are of equal priority. As set fort in the indenture and the master indenture, which we filed with the Court as appended to Mr. Topliff's declaration, the bond documents have strict subordination provisions. So in the event of default, you know, the A's have to be paid before the B's, the B's have to be paid before the C's, and then there's that strict priority among A, B, and C.

As we will demonstrate through Mr. Shandler's testimony, based on the analysis performed by the debtors and the Trustee and their respective professionals, which analysis was the basis for the restructuring support agreement and the plan in this case, absent the consent of the 2018A and B holders, absent the compromise that that the B bond holders made, claimants in Classes 6, 7, and 8 would not be entitled to receive anything under this plan.

So put another way, Class 6, the rejecting class, is receiving a far greater recovery under this plan than they

would be entitled to outside the plan because of the compromise that was made by the Class B bond holders. And absent that compromise made by the Class B bond holders and Class 5, which voted to accept the plan, we could get no distribution to either Class 6 or Class 7, and so Classes 6 and 7 are on equal footing or of equal priority. You know, and because no one junior to the holders of claims in Class 6 or 7 are receiving anything under the plan, the plan satisfies the cram-down requirements in (indiscernible).

With respect to the equity -- with respect to the Class 9 interests under the plan, here, the debtors are non-profit entities. The equity ownership in the debtors is deemed to be held by the public, not by any individual or entity, and so Class 9 interests are preserved, but there's no other distribution or value (indiscernible) interests. Accordingly, under the plan, no class of claims or interests junior to any rejecting class is receiving or retaining any property under the plan and the plan is therefore fair and equitable.

The plan does not unfairly discriminate because each class is legally distinct from one another and each descending class is receiving more than its baseline entitlement due to the compromise being made by the B bond holders here.

Your Honor, therefore, the debtors submit that the cram-down requirements of the Bankruptcy Code and Section 1129(b) have been satisfied, as we'll further

demonstrate through the testimony of Mr. Shandler. Therefore, the plan is fair and equitable and the plan does not unfairly discriminate against any rejected class.

With respect to 1129(c), that's the requirement that there's only one plan. No other plan is being confirmed or contemplated at this time. And then, finally, 1129(g) avoidance of taxes. As set forth in the Topliff declaration, the principal purpose of the plan is not the avoidance of taxes.

So that is our argument in support of confirmation of the plan. At this point, I would like to proffer the Topliff declaration and proffer the Kjontvedt declaration and allow these parties to be cross-examined by anyone that wishes to be heard.

THE COURT: Okay. Does anyone have an objection to the admission of the Topliff declaration at Docket Number 318 [*sic*] or the balloting declaration at 314 into evidence?

(No audible response)

THE COURT: I hear none. Both of those declarations are admitted without objection.

Does anyone intend to cross-examine either of the declarants regarding the content of their declarations?

(No audible response)

THE COURT: Okay. I hear none.

Those declarations are admitted.

(Docket Numbers 314 and 317 are admitted into evidence)

MR. GORDON: Your Honor, at this point, the debtors wish to call Chad Shandler, the debtors' financial advisor, to testify in support of confirmation of the plan.

THE COURT: Okay. Thank you.

I can see Mr. Shandler on screen. Ms. Dungey, would you please swear in the witness?

THE CLERK: Yes. Please raise your right hand.

CHAD SHANDLER, DEBTORS' WITNESS, SWORN

THE CLERK: And could you please state your full name and spell your last name for the record?

THE WITNESS: Chad Shandler, S-H-A-N-D-L-E-R.

THE CLERK: Thank you.

THE COURT: Mr. Shandler, before your testimony begins, can you tell the Court where you're located?

THE WITNESS: Currently, I am in Scarsdale, New York.

THE COURT: Okay. Are you in a home or in your office?

THE WITNESS: I am in my home office.

THE COURT: Okay. Are you alone in the room, sir?

THE WITNESS: I am, Your Honor.

THE COURT: Okay. I'm instructing you to please stay alone in your room until your testimony is complete this morning. If you need to take a break, please let us know and we'll take a break. But while you are testifying, you need to

be alone.

Also, I'm instructing you not to look or read at any email or texts during your testimony, including during any breaks. If you have anything that you need to refer to or look at in connection with your testimony, please tell us what you're looking at so we know if you're referencing anything because obviously we can't see you.

Do you understand these instructions, sir?

THE WITNESS: I do, Your Honor.

THE COURT: Okay. Thank you.

You may proceed Mr. Gordon.

*DIRECT EXAMINATION

BY MR. GORDON:

Q Good morning, Mr. Shandler.

A Good morning.

Q Could you state what is your position with FTI Consulting?

A I'm a senior managing director in our corporate finance and restructuring practice and the co-head of our healthcare restructuring practice.

Q And so in that role, could you just describe generally what it is that you do at FTI consulting?

A So as a senior managing director, my responsibilities are I am the primary person responsible for most of the matters for which I am working on, any client engagements. That goes to supervising all of the work. In cases like this, it would be

similar to preparation of cash flow projections, preparation of operating projections, development of restructuring plans. Obviously, I am also responsible for soliciting new work from new clients as well.

In terms of running the healthcare or co-leading the healthcare restructuring practice, I am also charged with the development of the skills and services within that practice segment.

Q Thank you.

And now, could you just, briefly, what's your educational background?

A I have a Bachelor's of Science in Business Administration from the Olin School of Business at Washington University. I am also a certified public accountant, both in the States of New York and New Jersey.

Q How long have you been with FTI?

A Since September of 2018.

Q Before that, where did you work?

A Before that, I was a partner in the accounting and consulting firm of CohnReznick, where I had been for almost 10 years. My last position there was, again, both a partner as well as the national practice leader for their restructuring dispute resolution practice.

Q And so overall, how long have you been in the restructuring industry?

A Almost 30 years.

Q And can you just briefly describe your background in the healthcare restructuring space?

A Primarily, it started in 2000, which was the transition of -- with the Medicare system from what had been a cost-plus system to a credit-prospective payer system. That was my first introductory into really skilled nursing facilities or nursing homes, where I worked on a fairly significant chain of nursing homes at that particular point in time.

Since 2006, pretty much 80 percent of my time has been spent more or less in the senior living space or in some fashion of the healthcare space. This includes continuing care retirement communities, independent living, assisted living memory care, assisted living, and skilled nursing facilities, as well as acute care hospitals, critical access hospitals, and free-standing emergency rooms.

Q Thank you for that.

So getting to this case, in particular. So when did you start working with what are now the debtors in these Chapter 11 cases?

A Approximately May of 2020.

Q And when you were engaged in May of 2020, what did you understand to be the purpose of your engagement?

A The initial focus of the engagement was to actually focus on the cash flow of what are now the debtors, determining how

much runway they had, and what obligations they could satisfy. In particular, whether or not there was sufficient cash available to make certain payments into the massive trust indenture related to its bond obligations, and yet still have sufficient cash available to care for our residents and operate the business in the ordinary course.

Q At the time you were retained, were the debtors in compliance with their obligations under the bond documents?

A They were not. They had -- they had ceased making monthly bond payments to the master trust indenture -- to the master trustee.

Q So your initial task was cash forecasting. Did you prepare budgets and cash flows for the debtors?

A We did. We had analyzed the operations of the debtors up until that particular point in time, taking into account what their expense run rate would wind up being, as well as the impact of occupancy. Obviously, at this particular point in time, we had just entered the pandemic, which had a significant impact on the debtors' occupancy, which is the main driver for its revenue and cash receipts during this period of time, as well as evaluating the increased expenses associated with operating a healthcare facility during the pandemic.

And this analysis was not done just on a holistic basis, but we actually did look at each individual facility that the debtors were operating because it is -- you do need to

understand how each facility is itself being impacted by its own operations and by the market area.

Q And this cash forecasting analysis you did, did this result in any agreements with the bond holders?

A It did. It resulted in July of 2020 a forbearance agreement with the bond holders, which was then subsequently extended multiple times.

Q Okay. So once that phase of your engagement was completed, we were under forbearance, what happened next? What did you do next?

A Well, that was the next stage because now we had the breathing room, if you will, to be able to -- we came to agreement with the bond holders with regard to what expenses and what potential debt service we may have paid or caught up with in a particular period of time. And now, it was moving into what could we -- what would the company actually look like on a go-forward basis.

Again, just as we did on the cash flow analysis, we analyzed each individual property of the debtors, meaning each actual facility that the debtors operate and looked at it in terms of also the services that each facility was providing. As we know -- as we now know, and I think it has been disclosed previously, some facilities are independent living, some do not have independent living, there's assisted living, and memory care services that are being provided, potentially all or a

part or some with regard to each one of the facilities.

We actually went on virtual site visits of each of the facilities because we could not go on the campus during that particular period of time because of the pandemic restrictions. We interviewed key people at the facilities, meaning primarily, the executive director as well as the marketing and sales staff, if there were other key positions, for example, plant operations, understanding the capital expenditure needs that would occur at each of the different facilities. And we analyzed the financial trends, again, historical, with regard to each of the facilities, and determined certain assumptions, both with regards to expenses, as well as occupancy going forward until we reached the point of stabilization and to try to determine the amount of funds available for debt service that would be generated and that's the amount of funds that we would be able to use to satisfy, potentially satisfy, at least in part, our debt obligations going forward.

So all of that work was being done in order to get to a point to have a meaningful negotiation with our various creditor constituencies.

Q And so the funds available for debt, sir, what is that? In layman's terms, what is -- is that like the amount of debt the debtors could support?

A It's not. It's actually -- it's more than that.

What the funds available for debt service is it analyzes,

after I consider all my cash receipts that will be coming in in any given period of time and all of my operating expenses that would be required to be paid over that period of time, what is left over is what we generally call our funds available for debt service.

Now, what that number then winds up being separated into is, it's also requirements for potentially CapEx requirements, liquidity requirements, and then also, funds to satisfy our debt obligations. So that number is really made up of, or can service, three different various components. What ultimately happens is is that you determine both what your liquidity needs are, and by that, we mean general working capital, cash flow that's required to maintain the business in the ordinary course, potential capital expenditures, and we also apply what we call a debt service coverage ratio, which is basically how much cash am I using to service my debt versus compared to what my total funds available to service debt, liquidity, and capital expenditures are.

So it is -- it is the whole -- it's the whole that then gets divided up into more or less three parts.

Q And in determining what the debtors' funds available for debt service would be, what were the fundamental assumptions that you made?

A That we would ultimately reach stabilization. And when we say stabilization, we mean a level of occupancy within the

entire portfolio that can be maintained in the long term.

As we know, dealing with the pandemic, most senior living facilities took a significant dip in their occupancy, especially in the assisted living areas. So it was a matter of how long will it take us to get back up to a normalized level of occupancy. In this case, we viewed basically around 94 percent as the sustainable level of occupancy going forward. So that was a major assumption that we anticipated would occur by 2024.

Other major assumptions would be dealing with staffing, expenses related to our workforce, the ability to get our workforce, things with regard to food, dealing with the management company as well, as well as capital expenditures and maintaining or getting the properties back up to a level that we thought we could sustain in the long term. So those are some of the major assumptions that we took into account.

Q And so once you came up with this, the funds available for debt service at stabilization, what happened next?

A At that point, we really entered into more -- into real hardcore negotiations as I would call them with the indenture trustee or master trust indenture trustee and his advisors.

At this point, what we had determined was we knew how much cash we had available to service debt in some capacity. And we also knew what our capital expenditure requirements what we thought they would wind up being going forward. And we also

were fairly confident with regard to the level of liquidity that we wanted to be able to maintain in the business.

And obviously, these are factors that are important to all constituencies, especially in trying to turn recovery to all the various constituencies. And through those negotiations and the funds available for debt service, while we had multiple rounds of capital structures, in terms of capital structures, again, with the master trustee and his advisors, we ultimately agreed on a capital structure that would both provide new money to the debtors, primarily for CapEx, as well as provide some additional liquidity in the more challenging beginning times to make sure that we could do the liquidity and get to a stabilized platform, as well as have appropriate reduction to the various levels of debt that we could ultimately service over the length of the bonds, or the length of maturity of the bonds.

Q Are you familiar with the financial projections that were appended to the debtors' disclosure statement, the disclosure statement entered at Docket 216?

A Yes, I am.

Q Were you involved in the preparation of those financial projections?

A I was.

Q Can you just walk us through those and explain what those projections demonstrate?

A In the end, what they demonstrate is is that over this period of time, the debtors will once again achieve a stabilized level of occupancy, as well as a stabilized level of cash flow or funds available for debt service to be able to -- and to be able to have the cash available to provide the necessary CapEx to bring the properties back up to their appropriate level of operations. It also shows that it will have sufficient cash flow to be able to meet the debt obligations as they are currently being restructured into their various series in accordance with the plan.

Q Okay. Thank you.

Are you familiar with the liquidation analysis that was appended to the debtors' plan supplement, which was -- it was Exhibit A to the plan supplement, which is at Docket 277?

A I am.

Q Were you involved in the creation of this liquidation analysis?

A I was.

Q Could you just briefly walk us through it?

A So we, as when we normally do our liquidation analyses, break the debtors' assets into various, you know, routine classes, things with regard to cash, accounts receivable, prepaid expenses, as well as land, building, fixtures, and the like.

So most of this, to the extent that they are what we call

current assets, cash is cash. That is a relatively easy number to develop. Accounts receivable, we always assume with regard to a liquidation, that people who owe you money are also going to be less likely to want to pay you money. So we do take appropriate, what we consider appropriate discounts based upon what the debtors' accounts receivable looks like at the date and time that we do the liquidation analysis.

Most of our accounts receivable -- frankly, most of our revenue is paid current because it's billed in advance at the beginning of the month and collected. Otherwise, we have to deal with each one of those residents individually. So that becomes less of an issue.

Prepaid expenses are more or less based upon if there's any opportunity to get money back from that. As we looked at it in terms of the debtors really operating assets or each one of the facilities, we looked at that from the standpoint of what similar transactions have -- the transactions of the sale of similar facilities have been going from a comparable transaction basis and discounted those at different levels, given the fact that this is a liquidation. And generally speaking, you do not get full-going-concern value as it relates to properties being sold within the liquidation.

At the end of the day, we viewed that there was approximately, on a low end, roughly about $87 million, and kind of high-end, roughly about $132 million, that would be

generated from the liquidation of the debtors' assets.
Q And so at that liquidation range, 87 million to 132 million, what would that mean for creditor recoveries in a liquidation?
A That would mean that no creditor class would receive a hundred cent recovery. And, at most, the only creditor class beyond the Chapter 7 Trustee's claims, with one to be in the 2018 Series A bond holders, and they would not receive a hundred percent recovery.
Q And why is it that only, at a liquidation value of 87 to 100 -- I assume it's 132? Why is it that only the A's would obtain a recovery?
A Because the master trust indenture lays out a very specific plan with regard to the distribution of recoveries or of assets within the various series, and the Series B and the Series C are subordinate to the A. The B's are subordinate to the A, the B's and C's are subordinate to the A's, and the C'S are subordinate to the B's.
Q Okay. Now, I want to talk about the plan and the treatment of the C bond holders under the plan. Based on all the analyses you've done, so the liquidation analysis, your financial projections in support of feasability, and the FADs analysis, do you believe that the claims of the 2018C bond holders in Class 6, are they secured or are they unsecured?
A They are unsecured.

Q How do you know that?

A We actually looked at it from I would say a few different points of view to determine where the Series B -- what the 2018 Series B class would wind up falling out with regard to our overall analysis. As we know, right now, the 2018 Series A are being reinstated at the par plus accrued interest amount and being serviced. The principal and interest are -- interest is being serviced on an interest-only basis up until 2037, which is when our 2022A's are fully paid off. And then, they will start receiving principal.

Now, the 2018B's would not receive -- would not start receiving payments under the current structure until, roughly, 2042. So we looked at this at a few different ways.

The first would be going back to something we talked about earlier, Mr. Gordon, which was the funds available for debt service analysis. So we started -- if you look at it from that standpoint, and as I just stated, the 2022A's, again, the restructured 2018 -- sorry, the 2022B's, which are the restructured 2018A's, do not start receiving principal and interest until 2037. And in large part, they start receiving principal at that particular point in time because we have paid off the new money, 2022A's, and we are repurposing the funds, or the funds are being repurposed that previously serviced the debt of the 2022A's to now fund the full principal and interest amortization on the Series 2022B's.

When you look at the amount of cash that is available on a funds-available-for-debt-service basis, after servicing the 2022B's, and you consider the amount of cash that is required to provide CapEx for the debtors and provide sufficient liquidity going forward, what you find is that there are only roughly about $1.5 million available to service that debt at a debt service coverage ratio of approximately 1.29.

Now, when we normally look at restructuring debt, we look at various debt service coverage ratios. But again, that's a number, or a factor. You ultimately need to look at the net cash that's actually available and see if that actually meets your requirements as well to back into an appropriate debt service coverage ratio as well. Again, it's one factor that is considered.

When you look at the 20 -- if the 1.5 million, approximately, of funds available for debt service on a 20-year, 21-year amortization, which is the remaining useful life of the property for tax purposes, which is what the -- which is what we're all looking at, which is ultimately a 35-year amortization from where we are today, that would show that the only -- that the level of debt that could be supported is roughly $18 million at the Series 2018B interest rate of roughly about 5.72 percent. So basically, if we were to restructure the debt of the 2018B's based upon the funds available for debt service, the amount of term that is left

over and the interest rate which they are currently contracted at, we would only be able to serve roughly $18 million of principal, which is obviously less than the $36 million of principal that they currently are owed today.

The other way we looked at it was we looked at the cash flow stream that the 2022C's would receive under the plan. And, as I believe I testified earlier, they would not receive cash flow based upon the waterfall until, roughly, 2042. From that point forward until their obligation is paid off, they will receive a nominal amount, meaning a not-adjusted-for inflation or interest or time value of money of close to $30 million. But that is that value starting in 2042 going through, roughly, 2053 or 2054.

When you consider the time value of money on a conservative basis using, again, the interest rate that they currently have on the 2018B bonds of 5.72 percent, and I say conservative because when you consider the subordinate nature of this debt, it should be higher than what the other higher level series of debt could be. But, again -- so, if anything, it would -- the present value, or the net present value of the cash flow stream would be lower than what I'm about to suggest, but when you do look at the net present value of that payment stream, you are looking at something no more than $7.4 million.

So if I took what they are actually getting in terms of cash pursuant to the plan and looked at it in today's dollars

on a conservative basis, again, that would be roughly $7.4 million against the $36 million current claim. Again, less than the full amount, and therefore, when you look at the series, the recovery to the 2018 Series B's and the fact that it is in fact significantly less on a present value basis or on a serviceable basis than what the current claim would be, that would suggest that, given the fact that the Series C -- sorry, the 2018C's, are subordinate to the B's and the other classes are unsecured, that therefore, the 2018C's must therefore be unsecured as well as the unsecured creditors.

Q So if we -- if over the 35-year life of the plan, the existing life of the facilities, if the debtors, you know, contributed all their funds available for debt service, per your analysis to service a debt, absent the compromise made by the B's, the writing off 50 percent and lowering their interest rate, if that did not happen and the debtors use all the funds available for debt service for 35 years to service debt, would we ever get any money for the 2018C's?

A You would not.

Q And how is it that we're able to get money to the 2018C's up to this point?

A Because the 2018B's are gifting and providing a portion of their recovery to both the 2018C's, as well as the general unsecured creditors.

MR. GORDON: Your Honor, I don't have any further

questions for Mr. Shandler.

THE COURT: Is there any cross-examination of Mr. Shandler?

(No audible response)

THE COURT: I hear none.

Mr. Shandler, you're excused. Thank you for your testimony.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

MR. GORDON: Your Honor, that is our case in support of confirmation of the plan. I believe the debtors have demonstrated that we have satisfied all the applicable requirements of Sections 1129(a) and (b) for confirmation of the plan. Importantly, no objections have been filed to confirmation of the plan.

And for the reasons set forth today and based on the debtors' legal argument and the evidence the debtors have presented to the Court, the debtors request that the Court confirm the plan.

THE COURT: Okay. Does anyone wish to be heard with respect to the plan? Or does anybody have any objection to plan?

(No audible response)

THE COURT: Okay. I hear none.

Mr. Gordon, I have a few questions. Can you tell me

what is the amount of the allowed 2018B deficiency claim?

MR. GORDON: It would be 50 percent of the 2018B claim. So it was 50 percent of it is being written off. So I think, let me look at my notes here.

THE COURT: So they get the full 50 percent as a deficiency claim?

MR. GORDON: Yes, Your Honor.

THE COURT: And so what is the composition of Class 7, the GUC claim? What proportion of that claim in Class 7 are deficiency claims held by the 2018 bond holders?

MR. GORDON: So Class 7, it would be 50 percent of the Class B claim would be treated -- received by Class 7 treatment, which is the pro rata share of the $250,000.

THE COURT: Okay. Bear with me a second. I'm just reviewing my notes.

(Pause)

THE COURT: Just, I have one other question.

The plan defines the 2018A-1 and 2018B-1 bond claims as allowed secured claims and the 2018B and C bond claims as allowed under the terms of the plan, including the deficiency claim. Can you explain this distinction? What the purpose?

MR. GORDON: Could you say that -- could you ask that question one more time?

THE COURT: Yeah, so the plan defines the 2018A-1 and 2018B-1 bond claims as allowed secured claims, and the 2018B

and C bond claims, it just states they're allowed under the terms of the plan and includes the deficiency claim. I'm just curious the distinction with using the term allowed secured claims for 2018A-1 and B-1.

MR. GORDON: Well, Your Honor, so the debtors owed the money to UMB Bank as Trustee, right? So the actual creditor to whom the debtors have an obligation is UMB. UMB has a secured claim. They have liens and security interests on substantially all of the debtors' assets, and so that's why those claims are labeled as secured claims because they are -- they comprise a portion of what the debtors owe to UMB, which is a secured claim. As far as the deficiency, I think the deficiency is treated --

THE COURT: But I don't think -- I don't -- but allowed claim isn't a defined term, I guess is what I'm driving at. Allowed -- I understand why they're characterized that way. And allowed secured claims is a defined term but I don't think allowed claim is, and maybe I missed it.

MR. COCO: Your Honor?

THE COURT: Like the distinction between allowed secured versus allowed claim. Does that make sense? What I'm asking. 2018A-1 and A-2 are defined allowed secured, but 2018B is just allowed claim. Just want to make sure I get the distinction correct.

MR. GORDON: Your Honor, I think Mr. Coco would like

to address that issue.

MR. COCO: Yes, good morning, Your Honor.

THE COURT: Good morning.

MR. COCO: Nathan Coco from the Mintz Levin law firm on behalf of UMB Bank as indenture trustee.

Your Honor, I'm going to try to address the Court's question in this way. You know, I think all parties agree and Mr. Shandler's testimony demonstrates that the Series 2018A-1 and A-2 bonds are fully secured. And based on the valuation testimony from Mr. Shandler, the Series 2018B bonds are at least partially secured, but not fully secured. And, you know, the term, you know, allowed secured claim is used in conjunction with, you know, I guess the treatment and description of the Series 2018A-1 and A-2 bonds and maybe that term is even used in certain places with respect to the 2018B bonds.

But the term secured claim is separately defined under the plan to adopt the rubric of Section 506(a), which says that a claim is an allowed secured claim to the extent of the value of the collateral supporting that claim. And so, that's the way that we read the plan, even though it may discuss terms as being secured claims, you know.

That was before there was valuation testimony or any ruling on that testimony, and so, you know, perhaps there was no way of knowing for certain the extent to which a claim was

partially secured, fully secured, or unsecured. And so the plan was sort of written in a modular fashion to capture, you know, whatever result we got from this proceeding.

THE COURT: Okay. I appreciate what you're saying.

Okay. Let me ask. I have a -- let me just make sure no one has any comments on the plan or the proposed form of order this morning. I do have a couple of comments on the proposed form of order that I'd like to address before ruling, if we could.

First of all --

MR. GORDON: Certainly, Your Honor.

THE COURT: -- let me just state on the record, I do appreciate the debtors working with the Office of the United States Trustee to address certain plan modifications, including the definition of exculpated parties. I appreciate that the parties make an effort before presentation to the Court.

With respect to the form of order, I have a few comments, including, okay, on Page 3, Paragraph C, it addresses judicial notice. The Court has no issue taking judicial notice of the docket, but not all the documents filed in this case are considered evidence for confirmation so that I would ask that you strike the language in the parenthetical that states "(and deems admitted into evidence for purposes of confirmation)," that that language be stricken.

On Page 6 at Paragraph I, and this also applies to

the confirmation order at Paragraph 3. It concerns modification of the plan and the confirmation order. And I was just curious what are plan modifications contained in the confirmation order? Are there any?

MR. GORDON: Your Honor, I don't believe there are.

THE COURT: Okay.

MR. GORDON: Unless Ms. Katona corrects me.

THE COURT: I didn't think there were, but I just want to make sure.

MS. KATONA: There are not, Your Honor. We just wanted to capture -- in the event that there was anything from the outcome of today's hearing wanted to ensure it could be captured.

THE COURT: Okay. That's fine. I just wanted to make sure I wasn't missing anything.

With respect to Page 7, Paragraph K, on substantive consolidation, I was going to request a modification clarifying the scope of substantive consolidation with respect to the Court's finding. But I see that this has been addressed in this morning's revised order, so I appreciate that revision.

With respect to Page 11, Paragraph 11, which is the distribution of sale proceeds, is this provision necessary? Isn't this duplicative of the sale order that was previously entered by the Court?

MR. GORDON: It is, Your Honor.

THE COURT: I'm not opposed to it. I just don't appreciate why it's in here.

MR. GORDON: It's sort of a belt-and-suspenders approach.

THE COURT: Okay.

MR. GORDON: It is duplicative of what was in the sale order.

THE COURT: Okay. That's fine. I just wanted to make sure I wasn't missing anything with respect to the sale.

And on Page 12 at Paragraph 13, this is approval of the restructuring transaction. As I previously mentioned, the Court isn't approving the 2022 bond documents, so that language, that phrase should be stricken.

MR. GORDON: Understood, Your Honor.

THE COURT: Okay.

With that, I'm satisfied, based on the record before me, that the debtors' modified third amended plan at Docket 315 satisfies the confirmation requirements of Bankruptcy Code 1129. In terms of meeting the standard for confirmation, the debtors have admitted into evidence the declaration of Todd Topliff at Docket 318 [*sic*], which is not controverted and supports confirmation of the plan. The declaration addresses, among other things, the plan treatment, solicitation, and compliance with Sections 1129, 1122, and 1123 of the Bankruptcy Code.

The balloting declaration at Docket 314 explains that the debtors have satisfied the provisions of Section 1126 of the Bankruptcy Code with respect to solicitation and voting.

The debtors filed a memorandum of law in support of confirmation of the plan. And although that memorandum is not evidence, it is part of the record before the Court and explains how the debtors have satisfied their burden and the applicable statutory standards.

The evidence here today constitutes a *prima facie* showing that the plan does not discriminate unfairly and is fair and equitable with respect to Class 6, which is the only class to vote to reject the plan. No party in interest has rebutted this showing or otherwise objected to the plan.

Furthermore, the testimony here of Mr. Shade [*sic*] confirms that the treatment of Class 6 accords with the 2018 trust indenture's allocation of risk reflected in the scheme of payment priority among the series, and is likely a higher recovery than what holders in Class 6 would have received in a Chapter 7 liquidation based on the unrebutted liquidation analysis.

In addition, based on the uncontroverted evidence, as well as the lack of objection, I find that cause exists to waive the stay of the confirmation order so that the confirmation order will be effective immediately upon its entry. I will enter a revised proposed order with the

modifications that we've discussed here on the record. I'd ask Counsel to please submit the revised order under certification with a clean and blackline copy of the order.

Are there any questions?

MR. GORDON: Not from the debtors, Your Honor.

THE COURT: Okay. Is there --

MR. GORDON: Oh, I see Ms. Katona about to open her mouth. Hold on.

MS. KATONA: No. Your Honor, we just had one additional. We filed a revised proposed form of order this morning. One edit that did not make it into your copy, Your Honor, is at Paragraph 14, Page 12. It's the same -- we carried through the deemed substantive consolidation language into that finding paragraph as well. That was not in the red line order that was filed, but we will reflect in the further revised order that edit.

THE COURT: Oh, I see. Well, that -- so I went right over that. Yeah, that last line of that paragraph needs to address the consolidation with respect to claim and distribution purposes. Yes, thank you for pointing that out to me.

Is there anything further this morning?

MR. GORDON: No, Your Honor.

MS. KATONA: There is not from the debtors.

THE COURT: Okay. Well, thank you all for your very

helpful presentation, including the testimony that was presented this morning. I will look forward to entering your order today, and I hope you all have a great afternoon.

We stand adjourned.

MR. GORDON: Thank you, Your Honor.

MS. KATONA: Thank you.

(Proceedings concluded at 11:58 a.m.)

* * * * *

C E R T I F I C A T I O N

I, KAREN K. WATSON, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Karen K. Watson

KAREN K. WATSON, AAERT CET-1039

RELIABLE DATE: May 2, 2022